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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,303	09/08/2003	Richard B. Klein	LYNK.107728	9755

5251 7590 01/10/2005
SHOOK, HARDY & BACON LLP
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KANSAS CITY,, MO 64108

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,303

Applicant(s)

KLEIN ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final Office action is in response to the amendment filed October 12, 2004 by which claim 1 was canceled and each of claims 2-4 was amended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-4 *stand* rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,270,796 (Hauser '796).

Hauser '796 discloses a shoe rack for hanging on a door (B) comprising first and second opposed side frame members (39 and 10) each having a main body section (39) and a plurality of support arms (42) projecting outwardly therefrom and terminating in free ends displaced from the frame members and the door (B); the frame members presenting a substantially vertical structure spaced from the door and extending the length thereof, i.e., since 10 is spaced from door (at 17) then element 39, which is attached to 10, is spaced from the door also; a plurality of shoe-retaining bars (41) extend between the side frame members (39) and are oriented in tiers such that each tier has a first bar (41) located higher and closer to the door (B) than second and third bars (41) and the second and third bars (41) form a parallel pair of bars located on the free ends of the arms (42) so that a shoe placed on the bars (41) is angled upwardly towards the door and engages all three of the bars (41); *with respect to claims 2-4*, the bars (41) on the free ends of the arms (42) define the bars "arranged in pairs".

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Claims 2-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,695,073 (Klein *et al.* '073).

Klein *et al.* '073 disclose a shoe rack for hanging on a door which comprises a frame (at 22 and 40) having a hanger (25) for hanging on an upper edge of a door; a pair of opposed frame sides (14) on the frame and spaced apart from one another and presenting a substantially vertical structure spaced from the door; a plurality of outwardly extending arms (18) on each of the frame sides whereby the arms (18) on each of the frame sides are substantially aligned in pairs; a plurality of shoe retaining bars (20, 21) are arranged in pairs and extend between the frame sides whereby the vertical structures act as lateral barriers for the shoes placed on the bars (20, 21).

Response to Arguments

Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive.

Firstly, with respect to the Hauser reference and applicant's arguments (on page 6) that "(1) there is no vertical structure that serves as a lateral barrier and (2) there is no vertical structure that serves as the sole lateral barrier", it is noted that applicant's arguments are based entirely and directed only to *functionally* recited recitations and are therefore considered to be speculative. *In particular*, the size of a shoe or the way in which the particular user places the shoe on the bars, would be a part of how the vertical structures *act* as lateral barriers. For instance, a shoe having a bigger size than that shown in Figure 1 of Hauser, would extend rearwardly in the rack more and be disposed closer to the door. *Thus*, when moved sidewardly, along the bars, the shoe would come in contact with (at least) element 10, defined by the

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examiner to be a portion of the vertical structures. *Accordingly*, and in conclusion, applicant's arguments are considered to be more limiting than what is being positively claimed.

Regarding the Klein *et al.* reference and applicant's arguments (on page 7) that "the vertical members do not serve as the sole means ... Rather, the arms 18 serve as additional side barriers", it is noted that these arguments are considered to be more limiting than what is actually being claimed and therefore are not commensurate with the scope of the claim. *In particular*, the claims do not recite "side barriers" as recited by applicant in this argument, but rather the claim recites "the sole lateral barrier". *Accordingly*, the vertical members have been defined as the "sole" lateral barriers. Any other structure construed by the examiner, or applicant for that matter, that acts in any way as a barrier, would be defined as an "additional" barrier, and not part of the "sole" barrier.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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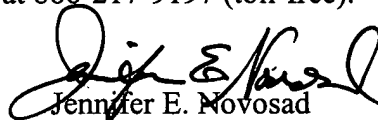
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
December 27, 2004